

IN THE HIGH COURT OF JUDICATURE AT PATNA

Cr.Misc. No.15851 of 1999

1. UDAI CHAND JHA SON OF LATE SHIV KANT JHA @ SHIV
CHANDRA JHA, RESIDENT OF VILLAGE CHAMPA, P.S. ADAR,
DISTRICT- MADHUBANI..... PETITIONER

Versus

THE STATE OF BIHAR.....OPP. PARTY

with

Cr.Misc. No.7314 of 2000

OM PRAKASH SON OF LATE HARI LAL GUPTA, RESIDENT OF
BIBI GANJ, POLICE STATION AND TOWN DANAPUR,
DISTRICT- PATNA..... PETITIONER

Versus

STATE OF BIHAR.....OPP. PARTY

With

Cr.Misc. No.7707 of 2000

RAM DEV RAI @ SARDARJEE SON OF LATE ANIK SARDAR,
RESIDENT OF POTHYA BAZZAR, P.S. AND TOWN DANAPUR,
DISTRICT- PATNA.....PETITIONER

Versus

STATE OF BIHAR..... OPP. PARTY

With

Cr.Misc. No.7645 of 2000

SANJAY KUMAR SON OF SRI KRISHAN PRASAD, RESIDENT OF
BIBI GANJ, P.S. AND TOWN, DANAPUR, DISTT. PATNA

Versus

STATE OF BIHAR..... OPP.PARTY

With

Cr.Misc. No.7484 of 2001

1. NARAIN PRASAD SON OF LATE SUDAMA PRASAD,
RESIDENT OF VILLAGE BATHUA BAZAR, P.S. PHULWARIA,
DISTRICT- GOPALGANJ

2. BHOLA RAUT SON OF LATE GAMA RAUT, RESIDENT OF
VILLAGE BATHUA BAZAR, P.S. PHULWARIA, DISTRICT-
GOPALGANJ

3. HARI SHANKAR SAH SON OF LATE MANGARU SAH,
RESIDENT OF VILLAGE LARHPUR, P.S. PHULWARIA,
DISTRICT – GOPALGANJ

4. SHEO SHANKAR SAH SON OF LATE MANGARU SAH,
RESIDENT OF VILLAGE LARHPUR, PS. PHULWARIA,
DISTRICT- GOPALGANJ..... PETITIONERS
VERSUS
STATE OF BIHAR..... OPP.PARTY

FOR THE PETITIONERS :- MR. RAJ KISHORE PRASAD,
MR. TEJ BAHADUR ROY,
ADVOCATES.

with
Cr.Misc. No.16495 of 2001

SIKANDAR PASWAN, SON OF GENA PASWAN, RESIDENT OF
VILLAGE- BABHANGAWAN, P.S. BIHPUR, DIST. BHAGALPUR
..... PETITIONER

Versus
THE STATE OF BIHAR.....OPP.PARTY

with
Cr.Misc. No.23103 of 2001

SANJAY KUMAR SAH, SON OF LATE TIPAN SAHU, RESIDENT
OF VILLAGE-DIMARI, P.S. MUFFASIL,
DISTT.BEGUSARAI..... PETITIONER

Versus
STATE OF BIHAR..... OPP. PARTY

FOR THE PETITIONER :- MR. N.K.AGRAWAL,SR.ADVOCATE
with

Cr.Misc. No.35219 of 2000

1. MATIUR RAHMAN SON OF JAHIDUR RAHMAN, RESIDENT
OF KOCHADHAMAN, P.S. KOCHADHAMAN, DIST.
KISHANGANJ

2. SHAHBAZ SUBHANI. SON OF ABDUS SUBHAN, R/O
VILLAGE- ANARKALI, P.S. KOCHADHAMAN,DISTRICT-
KISHANGANJ

3. ABUL KALAM SON OF MUSRAF ALI, R/O VILLAGE ALTA
KAMAL, P.S. KOCHADHAMAN, DIST-
KISHANGANJ.....PETITIONERS

VERSUS
STATE OF BIHAR..... OPP. PARTY

FOR THE PETITIONERS :- MR. RAMESH KR.AGRAWAL
ADVOCATE

FOR THE STATE :- MR. DAMODAR PD. TIWARY, A.P.P.

with
Cr.Misc. No.14857 of 2000

OM PRAKASH AGRAWAL SON OF DWARIKA PRASAD
SANTHALIA, RESIDENT OF KAHALGAON, P.S. KAHALGAON,
DISTRICT- BHAGALPUR..... PETITIONER

Versus

STATE OF BIHAR.....OPP.PARTY

with
Cr.Misc. No.23141 of 2003

1.DINESH KUMAR PODDAR @ DINESH PRASAD
2. UMESH KUMAR PODDAR, BOTH SONS OF SRI RAM
SAGARATH PODDAR, BOTH RESIDENT OF STATION ROAD,
MALI TOLA, P.S. TOWN & DIST-BEGUSARAI..PETITIONERS

VERSUS

STATE OF BIHAR..... OPP. PARTY

6 3-5-2010

Heard learned counsels for the petitioners and learned

counsel for the State in all these cases which have been heard as analogous matters because of the common issue of law as to whether the Special Judge, Essential Commodities Act could have taken cognizance of the offences after 8-7-1998 when the Essential Commodities (Special Provision) , Act 1981 had ceased to be operative.

2. On behalf of petitioners it was submitted that the aforesaid issue of law is no longer res integra and has been decided by this Court in the case of Padma Prasad Vrs. The State of Bihar, reported in 2002(3) PLJR 547, relying upon judgment of the Supreme Court in similar circumstances in the case of State of Tamil Nadu Vrs. Parmasiva Pandian, reported in A.I.R. 2001 SC 2972. In that case the apex court held that after lapse of Essential Commodities (Special Provision) Act, the earlier system of enquiry, cognizance or trial by the ordinary area

Magistrate having jurisdiction over the same shall come into play. Noticing the legal position that after lapse of Essential Commodities (Special Provision) Act the Special Judge, E.C. Act has no power to take cognizance of offence under the E.C.Act, relief was granted in that case.

3. In the aforesaid judgment in the case of Padma Prasad, relying upon the case mentioned in the Supreme Court judgment in the case of State of Tamil Nadu Vrs. Parmasiva it was observed that the Essential Commodities (Special Provision) Act lapsed on 24-10-1998. Learned counsel for the petitioners has submitted that the said date was mentioned due to inadvertent error because that was a date till which the Ordinance could have lasted at the maximum but in fact due to prior sitting of the Legislative Bodies the Ordinance lapsed on 8th July, 1998 and this fact has been communicated by the Government of India, Ministry of Food and Consumer Matters to the Secretary, Supply and Commerce Department, Government of Bihar through letter dated 16-2-1999 which has been extracted and noticed by Ranchi Bench of this Court in the case of Mali Ram Agrawal Vrs. State of Bihar, 2001(1) East Cr.C 24 (R.B.). The aforesaid submission on behalf of the petitioners is supported by the judgment noticed above as well as the letter of the Union of India and hence it is held that the Special Judge, Essential Commodities Act could not have taken cognizance of the offence under section 7 of the Act after 8-7-1998 when the Essential Commodities (Special Provision) Act, 1981 ceased to be operative due to expiry of Essential Commodities (Amendment) Ordinance 1998 (

Ordinance No. 13/98).

4. It is made clear that learned counsels for the petitioners wanted to raise some other issues also but since the common issue of law has been decided in favour of the petitioners following the judgment in the case of Padma Prasad (supra), the impugned orders of cognizance are quashed and the matter is remitted back to the concerned Area Magistrate having jurisdiction to try E.C.Act cases as per law. However, it is made clear that petitioners would be at liberty to raise all other points, if required, at appropriate stage. These applications are allowed to the aforesaid extent and the matter is remitted back to the appropriate court, ie, court of C.J.M./S.D.J.M. at the concerned place for expeditious action.

Naresh

(Shiva Kirti Singh, J.)

